

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 6, 2004

CALL TO PODIUM:

Tony Tomasello
Assistant City Manager

RESPONSIBLE STAFF:

Harold Belton, Director of
Finance and Administration

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
X	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item
is a public hearing)

Introduced	
Advertised	6/4/04
Hearing Date	6/21/04
Record Held Open	6/30/04
Policy Discussion	7/6/04

TITLE:

Resolution of the Mayor and City Council Authorizing the Issuance and Sale of Economic Development Revenue Bonds of the City of Gaithersburg for Asbury Methodist Village, Inc. (\$50,000,000)

SUPPORTING BACKGROUND:

On June 7, 2004, Asbury Methodist Village, Inc. ("Asbury") formally requested that the City of Gaithersburg, in accordance with the Maryland Economic Development Revenue Bond Act, Md. Ann. Code (1957), Art. 41, sections 14-101 through 14-109, issue and sell bonds as its limited obligations and not upon its full faith and credit or pledge of its taxing power, and to loan the proceeds of the sale of such bonds to Asbury. The transaction would involve conduit debt only. The City of Gaithersburg incurs no liability as a result of the transaction, and Asbury fully indemnifies the City for the life of the bonds.

Asbury initially sought a bond issue in 1990. The present bond issue is sought in order to borrow additional money to finance or refinance certain improvements, including the renovation of the existing assisted living apartments, construction of a parking garage, construction of the Rosborough Center, and construction of the Loop Road Extension from 211 Russell Avenue to 201 Russell Avenue.

A public hearing was held on June 21, 2004. Following a presentation by Cheryl O'Donnell Guth, Esq., and a representative from Asbury, there were no comments from the public. The record closed on June 30, 2004. To date no comments have been received from the public.

Attached:

Exhibit 1: Letter of Request

DESIRED OUTCOME:

Approve Resolution

Resolution Request Form

REQUEST FORM FOR RESOLUTIONS PERTAINING
TO EXPENDITURES FROM THE CITY BUDGET
(CONTRACTS/PURCHASES, TRANSFER FUNDS)

(Please attach the Mayor and Council Agenda Cover Sheet to this Form. For contracts/purchases, the Cover Sheet **MUST** include a list of all bidders and bid amounts.)

Requested by: Tony Tomasello Date of City Council Meeting: June 21, 2004

AUTHORIZING

Purchase ☐ Award Contract ☐ Transfer Funds ☐ Negotiate/
Execute a Contract ☐

Issue and Sell Conduit Bonds ☒

BID INFORMATION:

Advertisement Date June 4, 2004

Newspaper(s) Business Gazette

Bids Opened/Tabulated (date) _____

DESCRIPTION OF ITEM(S):

(Be specific; include quantity, item name, model number, etc.)

Authorizing the issuance and sale of bonds, and to loan the proceeds of the sale of such conduit bonds to Asbury Methodist Village, Inc.

CONTRACTED/PURCHASE FROM:

Company Name: _____

Street Address _____

P. O. Box Number _____

City/State/Zip _____

AMOUNT:

Check One: In the Amount of _____ Not to Exceed \$50,000,000.00

FUNDS TO BE EXPENDED FROM: Operating Budget _____ Capital Improvements Budget _____

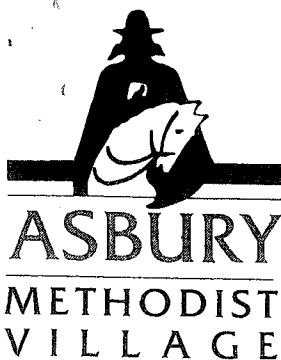
Account Number: _____

(For Finance Department use only; not to be included in the Resolution)

VERIFICATION OF AVAILABILITY OF FUNDS

Available _____ Not available _____

Anthony Tomasello 15 June 2004
Finance Dept. Date



JUN - 8 2004



201 Russell Avenue
Gaithersburg, Maryland
20877

June 7, 2004

(301) 330-3000
(800) 327-2879
TTY (800) 735-2258
Fax (301) 216-5747
www.asbury.org

Mr. David B. Humpton
City Manager
City of Gaithersburg, Maryland
31 South Summit Avenue
Gaithersburg, Maryland 20877

Asbury Apartments
and Villas
401 Russell Avenue
(301) 216-4038
Fax (301) 216-5750

Re: Proposed City of Gaithersburg, Maryland Economic Development
Revenue Bonds (Asbury Methodist Village, Inc. Facilities), Series
2004

Dear Mr. Humpton:

Asbury Methodist Village, Inc., a Maryland not-for-profit, nonstock corporation (the "Borrower") respectfully requests that the City of Gaithersburg, Maryland (the "City") authorize, issue and sell its economic development revenue bonds in one or more series in an aggregate principal amount not to exceed Fifty Million Dollars (\$50,000,000) (the "Bonds") for the purpose of financing and refinancing the cost of certain facilities described below pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act, Sections 14-101 to 14-109 inclusive, of Article 41 of the Annotated Code of Maryland (the "Act"). It is intended that this letter, if accepted by the City, shall constitute a "letter of intent" as contemplated by Section 14-101(h) of the Act. The Borrower proposes that the City lend the proceeds of the Bonds to the Borrower pursuant to the terms and provisions of a loan agreement to be entered into by and between the City and the Borrower (the "Loan Agreement") for the purpose of financing and refinancing the acquisition (as defined in the Act) of the facilities, each of which is a "facility" within the meaning of the Act (collectively, the "Facility"), consisting generally of the following:

- (1) the completion of the Loop Road Extension from 211 Russell Avenue around to 201 Russell Avenue on the Borrower's existing senior living campus located in the City;

James F. Rosborough, Jr.
Cultural Arts and
Wellness Center
409 Russell Avenue
(301) 987-6002
Fax (301) 987-6263



- (2) the renovation of an existing six-story apartment building (known as 211 Russell Avenue) into approximately 65 units on the Borrower's existing senior living campus located in the City;
- (3) the construction of an approximately 45,000 square foot parking garage adjacent to 211 Russell Avenue with approximately 67 covered parking spaces;
- (4) the construction of the James F. Rosborough Jr. Cultural Arts and Wellness Center located at 409 Russell Avenue on the Borrower's existing senior living campus located in the City;
- (5) the acquisition of furnishings, fixtures and equipment and landscaping, roads or other rights of access, utilities and other facilities as may be necessary or suitable for the foregoing;
- (6) capitalized interest on the Bonds;
- (7) other capital costs of the Borrower; and
- (8) costs of issuance of the Bonds.

The Borrower owns and operates a continuing care retirement community ("CCRC") for senior citizens and the Facility will be used in connection with the operation of the CCRC. The Borrower has been determined by the Internal Revenue Service to be an exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The Bonds shall be repayable by the City solely from the revenues derived from payments made to the City pursuant to the terms and provisions of the Loan Agreement, as amended from time to time, and from such other monies as may be made available by the Borrower to the City for such purpose. All costs of acquiring the Facility in excess of such loan proceeds will be paid by the Borrower.

The Loan Agreement, as amended from time to time, will require that: (1) the proceeds of the Bonds be used solely to finance the costs (to the fullest extent

permitted by the Act) of the acquisition, construction, and renovation of the Facility, (2) the Borrower make payments which will be sufficient to enable the City to pay the principal of, premium, if any, and interest on the Bonds, and all expenses incurred by the City and fees due to the City in connection with the issuance of the Bonds and the making and administration of the loan, as the same become due and payable.

The Borrower hereby acknowledges that the City reserves the right, in its sole and absolute discretion, to take any actions which the City may deem necessary in order to ensure that the City (a) complies with all federal and state laws, whether proposed or enacted, which may restrict the issuance of its economic development revenue bonds, and (b) issues such bonds to finance facilities which the City determines, in its sole and absolute discretion, will provide the greatest benefit to the City. Specifically, the City reserves the right to choose to issue its economic development revenue bonds for facilities other than the Facility, and to issue or not to issue such bonds and the Bonds in the order of priority which the City Manager, in his sole and absolute discretion, may determine.

It is expressly agreed and understood that (a) the City will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds, the making of the loan or the financing of the acquisition, construction, or renovation of the Facility, (b) the Facility will be acquired, constructed and renovated so as to conform to the requirements of the Borrower, and (c) the Borrower shall (i) select and work with the suppliers and contractors who will provide, construct and equip the Facility and negotiate and approve all contracts, construction plans, specifications, and all financing and refinancing arrangements in connection with the acquisition, construction, and renovation of the Facility, and (ii) pay all costs incurred by or on behalf of the City in connection with the proposed financing, including the administration thereof, and in connection with the acquisition, construction, and renovation of the Facility, including without limitation, all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed financing, refinancing and acquisition of the Facility, including (without limitation) the fees of bond counsel, all costs incurred in connection with publication of notices of any public hearings to be held in connection therewith, and compensation to any other person (other than full-time employees of the City) performing services by or on behalf of the City in connection with the transactions

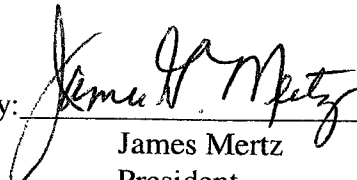
contemplated by this Letter of Intent, whether or not the proposed financing, refinancing and acquisition is consummated.

It is further understood and agreed by the undersigned that the proposal contained herein is subject to (a) the approval and appropriate action by the Mayor and City Council of the City of Gaithersburg, Maryland, and the City Manager of the City of Gaithersburg, Maryland, and (b) the approval of the detailed provisions of all documents pertaining to the financing as yet to be developed. The acceptance of this Letter of Intent by the City shall evidence the present intent by the City to authorize, sell, issue and deliver the Bonds and to authorize the loan for the purposes described herein, provided, however, the City cannot guaranty or assure the undersigned that the Bonds will actually be sold on terms acceptable to the Borrower or any other interested parties, that the Borrower will obtain purchasers of the Bonds qualified to purchase the Bonds under applicable federal and state securities law, that the Borrower will have the ability to make payments sufficient to enable the City to repay the Bonds, that the Facility will be feasible, economically or otherwise, that the Facility will be in compliance with applicable local, State or federal laws, or that the proposed transaction will be consummated.

The Borrower understands that the Bonds are and shall remain payable solely and only from revenues derived from payments to the City by the Borrower and that neither the Bonds nor any interest or premium thereon shall ever constitute an indebtedness or a charge against the general credit or taxing power of the City, within the meaning of any constitutional or charter provision or statutory limitation, and neither shall ever constitute or give rise to any pecuniary liability of the County. Nothing contained in this Letter of Intent shall be deemed to constitute an undertaking by the City to expend any of its funds to effect any or all of the transactions contemplated by this Letter of Intent.

Very truly yours,

ASBURY METHODIST VILLAGE, INC.

By: 
James Mertz
President

ACCEPTED:

CITY OF GAITHERSBURG, MARYLAND

By: _____
David B. Humpton
City Manager

Date: _____

Cc: Cheryl O'Donnell Guth, Esquire

WFIN204014.5

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
AUTHORIZING THE ISSUANCE AND SALE OF ECONOMIC
DEVELOPMENT REVENUE BONDS OF THE CITY OF GAITHERSBURG
FOR ASBURY METHODIST VILLAGE, INC.

Whereas, pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act, to issue and sell, at one time or from time to time, as limited obligations and not upon its faith and credit of the City, or pledge of its taxing power, its economic development revenue bonds in an aggregate principal amount not to exceed \$50,000,000, and to loan the proceeds from the sale of such bonds to Asbury Methodist Village, Inc., a not-for-profit corporation organized under the laws of the State of Maryland, to be used for the purpose of financing or refinancing the costs of the acquisition of certain facilities, within the meaning of such Act, located in the City of Gaithersburg, to be used by such corporation for its tax-exempt purposes of providing a continuing care retirement community for senior citizens; authorizing the City Manager to specify, prescribe, determine, provide for, approve, execute and deliver any and all matters, details, forms, documents or procedures necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery and payment of and for such bonds and the lending of the proceeds thereof; reserving certain rights in the City; and generally providing for and determining various matters in connection with such bonds and the lending of the proceeds thereof; and

Whereas, Sections 14-101 through 14-109, inclusive, of Article 41 of the Annotated Code of Maryland, being the Maryland Economic Development Revenue Bond Act (the "Act") empowers any public body (as defined in the Act) to issue and sell bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, and to loan the proceeds of the sale of such bonds to one or more facility users (as defined in the Act) to finance or refinance any costs of the acquisition (as defined in the Act) of a facility or facilities (as defined in the Act) for one or more facility users (as defined in the Act); and

Whereas, the Act states the declared legislative purpose of the General Assembly of Maryland to be to (1) relieve conditions of unemployment in the State of Maryland (the "State"); (2) encourage the increase of industry and commerce and a balanced economy in the State; (3) assist in the retention of existing industry and commerce and in the attraction of new industry and commerce in the State through, among other things, port development and the control, reduction or abatement of pollution of the environment and the utilization and disposal of wastes; (4) promote economic development; (5) protect natural resources and encourage resource recovery; and (6) generally promote the health, welfare and safety of the residents of each of the counties and municipalities of the State; and

Whereas, the City has received a letter from Asbury Methodist Village, Inc., a Maryland not-for-profit corporation and a facility applicant and facility user as defined in the Act (the "Facility Applicant"), dated June 7, 2004, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Letter of Intent"), requesting the City to issue and sell its bonds pursuant to the Act and to loan the proceeds of the sale thereof to the Facility Applicant, for the purpose of financing and refinancing the costs of the acquisition of certain facilities within the geographical boundaries of the City, as hereinafter described. The Facility Applicant acknowledges in the Letter of Intent that the City reserves certain rights concerning the issuance of the Bonds as provided in Section 5 of this Resolution; and

Whereas, a public hearing concerning the issuance of such bonds and the location and nature of such facilities has been held following reasonable public notice (within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code")); and

Whereas, the facilities which the Facility Applicant has requested to be so financed and refinanced shall consist generally of: (i) the completion of the Loop Road Extension from 211 Russell Avenue around to 201 Russell Avenue on the Facility Applicant's existing senior living campus located in the City; (ii) the renovation of an existing six story apartment building (known as 211 Russell Avenue) into approximately 65 units on the Facility Applicant's existing senior living campus located in the City; (iii) the construction of an approximately 45,000 square foot parking garage adjacent to 211 Russell Avenue with approximately 67 covered parking spaces; (iv) the construction of the James F. Rosborough Jr. Cultural Arts and Wellness Center located at 409 Russell Avenue on the Facility Applicant's existing senior living campus located in the City; (v) the acquisition of furnishings, fixtures and equipment and landscaping, roads or other rights of access, utilities and other facilities as may be necessary or suitable for the foregoing; (vi) capitalized interest on the Bonds; (vii) other capital costs of the Facility Applicant; and (viii) costs of issuance of the Bonds (collectively, the "Facilities"); and

Whereas, the City, based upon the findings and determinations and subject to the reservation of certain rights as hereinafter set forth, has determined to issue and sell, in addition to any bonds authorized to be issued by any other act of the City, its bonds (within the meaning of the Act), at one time or from time to time, in an aggregate principal amount not to exceed Fifty Million Dollars (\$50,000,000), hereinafter designated "City of Gaithersburg, Maryland Economic Development Revenue Bonds (Asbury Methodist Village, Inc. Facilities)" (the "Bonds"), and to loan the proceeds of the Bonds (the "Loan") to the Facility Applicant on the terms and conditions as hereinafter provided in order to finance and refinance, in whole or in part, the costs of the acquisition by the Facility Applicant of the Facilities, to encourage economic development and to protect the health, welfare and safety of the citizens of the State and of the City.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Gaithersburg, that:

Section 1: Acting pursuant to the Act, it is hereby found and determined as follows:

(a) As evidenced by the Letter of Intent, a “letter of intent” within the meaning of the Act, the issuance of the Bonds pursuant to the Act by the City, a “public body” and a “municipality” within the meaning of the Act, in order to loan the proceeds to the Facility Applicant, a “facility applicant” and a “facility user” within the meaning of the Act, for the sole and exclusive purpose of financing and refinancing the “acquisition”, within the meaning of the Act, of the Facilities, “facilities” within the meaning of the Act, for use by the Facility Applicant, will facilitate the acquisition of the Facilities by the Facility Applicant.

(b) The accomplishment of the transactions contemplated and authorized by this Resolution, including (without limitation) the acquisition of the Facilities by the Facility Applicant and the financing and refinancing thereof, will promote the declared legislative purposes of the Act by (i) creating and sustaining jobs and employment, thereby relieving conditions of unemployment in the State and in the City; (ii) encouraging the increase of industry and commerce and a balanced economy in the State and in the City; (iii) assisting in the retention of existing industry and commerce in the State and in the City; (iv) promoting economic development; and (v) generally promoting the health, welfare and safety of the residents of the City and of the State.

(c) Neither the Bonds, nor the interest thereon, shall ever constitute an indebtedness or a charge against the general credit or taxing powers of the City within the meaning of any constitutional or charter provision or statutory limitation and neither shall ever constitute or give rise to any pecuniary liability of the City. The Bonds and the interest thereon shall be limited obligations of the City, payable by the City solely from the revenues derived from Loan repayments (both principal and interest) made to the City by the Facility Applicant on account of the Loan and from any other moneys made available to the City for such purpose. No such moneys will be commingled with the City's funds or will be subject to the absolute control of the City, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the City to insure that the proceeds of the Bonds are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use. The public purposes expressed in the Act are to be achieved by facilitating and expediting the acquisition of the Facilities by the Facility Applicant.

(d) The City Manager of the City (the “City Manager”) is the chief executive officer of the City within the meaning of the Act and shall undertake on behalf of the City certain responsibilities described in the Act and hereinafter specified.

(e) The Bonds may be sold at either private (negotiated) sale or at public sale, and at, above or below par, in any event in such manner and upon such terms as the City Manager, in his/her sole and absolute discretion, deems to be in the best interests of the City.

(f) All or a portion of the Bonds may be issued as "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code.

Section 2: This Resolution is intended to be, and shall constitute, evidence of the present intent of the City to issue and deliver the Bonds authorized hereby in accordance with the terms and provisions hereof. Notwithstanding the foregoing, nothing in this Resolution shall be deemed to constitute (a) an undertaking by the City to expend any of its funds (other than the proceeds from the sale of the Bonds, revenues derived from the Loan repayments made to the City on account of the Loan, and any other moneys made available to the City for such purpose) to effect the transactions described herein or (b) an assurance by the City as to the availability of one or more ready, willing and able purchasers for the Bonds or as to the availability of one or more purchasers of the Bonds to whom the Bonds may lawfully be sold under, among others, applicable federal and state securities and legal investment laws.

Section 3: As described in the Letter of Intent, the City will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds, the making of the Loan or acquisition of the Facilities, and the Facilities shall be acquired so as to conform to the requirements of the Facility Applicant; accordingly, the Facility Applicant shall (a) negotiate and approve all refinancing arrangements in connection with the acquisition of the Facilities, and (b) pay all costs incurred by or on behalf of the City in connection with the issuance and sale of the Bonds, the making of the Loan, including the administration thereof, including (without limitation) all costs incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed financing, refinancing and acquisition, including (without limitation) the fees of bond counsel, all costs in connection with publication of notices of any public hearings to be held in connection therewith, and compensation to any other person (other than full-time employees of the City) performing services by or on behalf of the City in connection with the transactions contemplated by this Resolution, whether or not the proposed financing, refinancing and acquisition is consummated.

Section 4: In addition to any bonds authorized to be issued by any other act of the City, the issuance, sale and delivery by the City of the Bonds, at one time or from time to time, and in one or more series, in an aggregate principal amount not to exceed Fifty Million Dollars (\$50,000,000), are hereby authorized, subject to the provisions of the Act and this Resolution. The City will lend or otherwise make available the proceeds of the Bonds to the Facility Applicant (the "Loan"), as permitted by the Act, pursuant to the terms and provisions of a loan agreement to be entered into between the City and the Facility Applicant (the "Loan Agreement"), to be used by the Facility Applicant for the sole and exclusive purpose of financing and refinancing the costs of

the acquisition of the Facilities, to the extent permitted by the Act and the Code. The Bonds and the interest thereon shall be limited obligations of the City, repayable by the City solely from the revenue derived from Loan repayments (principal and interest) made to the City by the Facility Applicant and from any other moneys made available to the City for such purpose. The maximum principal amount of Bonds which may be issued, sold and delivered pursuant to this Resolution is Fifty Million Dollars (\$50,000,000), unless such amount shall be increased by a resolution supplemental hereto.

Section 5: The City reserves the right, in its sole and absolute discretion, to take any actions which it may deem necessary in order to ensure that the City (a) complies with all federal and State laws, whether proposed or enacted, which may apply to or restrict the issuance of its economic development revenue bonds, and (b) issues such bonds to finance facilities which the City determines, in its sole and absolute discretion, will provide the greatest benefit to the City. Specifically, the City reserves the right to choose to issue its economic development revenue bonds to finance or refinance facilities other than the Facilities, and to issue or not to issue such bonds at such times and in the order of priority which the City Manager, in his sole and absolute discretion, may determine.

Section 6: The Bonds shall each be designated "City of Gaithersburg, Maryland Economic Development Revenue Bond (Asbury Methodist Village, Inc. Facilities)." The Bonds may be further identified by the year of issue and/or such other appropriate designations as the City Manager may approve.

The Bonds shall mature on such date or dates as may be approved by the City Manager; provided that the Bonds shall mature not later than 30 years from their date of issuance.

Each of the Bonds shall be executed in the name of the City and on its behalf by the manual or facsimile signature of the Mayor of the City. The seal of the City or a facsimile thereof shall be affixed to each of the Bonds, and attested by the manual or facsimile signature of the City Manager. If deemed appropriate by the City Manager, each of the Bonds may also be authenticated by the manual or facsimile signature of a trustee, registrar or paying agent. At least one of such signatures on each Bond shall be a manual signature.

Section 7: If deemed advisable by the City Manager, the City will enter into a trust agreement (the "Trust Agreement") for the protection of the holders of the Bonds with a bank having trust powers or a trust company (the "Trustee") to be approved by the City Manager and, pursuant to the Trust Agreement, the City will assign to the Trustee (among other things) (a) all of the City's right, title and interest in and to and remedies under the Loan Agreement, including (without limitation) any and all collateral referred to therein, excepting only the right of the City to indemnification by the Facility Applicant, taxes paid by the Facility Applicant to the City and to payments to the City for the City's administrative fees or expenses, if any, (b) the receipts and revenues of the

City from the Loan, (c) certain monies which may be at any time or from time to time on deposit with the Trustee, (d) all of the City's right, title and interest in and to and remedies under such documents as the City Manager shall deem necessary or expedient to effectuate the issuance, sale and delivery of the Bonds.

Section 8: In connection with the transactions described herein, the City Manager is hereby authorized and empowered, by executive order or otherwise:

(a) to accept the Letter of Intent, in order to further evidence the present intent of the City to participate in the financing and refinancing of the costs of the acquisition of the Facilities;

(b) to approve the form and provisions of, execute and deliver the Bonds, the Loan Agreement and the Trust Agreement;

(c) to approve the form and provisions of any Preliminary Official Statement, final Official Statement or other offering document with respect to the Bonds;

(d) if necessary, to appoint a trustee or trustees, a bond registrar and paying agent or agents for the Bonds;

(e) to provide for the direct payment by the Facility Applicant of all costs, fees and expenses incurred by or on behalf of the City in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the City) performing services by or on behalf of the City in connection therewith; and

(f) to specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents, or procedures, including (without limitation) bond purchase agreements, deeds of trust, assignments and financing statements, and such other documents as are necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery or payment of or for the Bonds and the making of the Loan.

Section 9: The terms, provisions, form and substance of any and all documents and instruments to be executed or entered into by or for the benefit of the City in connection with the transactions authorized by this Resolution, including all customary closing certificates and documents, shall also be subject to the approval of the City Attorney or the City Attorney's designee prior to the execution and delivery thereof by the appropriate official of the City.

Section 10: In satisfaction of the requirements of Section 147(f) of the Code, the City hereby approves the Facilities and the Bonds.

Section 11: The members of the City Council, the Mayor, the City Attorney, and the Director of Finance of the City, for and on behalf of the City, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as the City Manager may determine executive order or otherwise to be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of a certificate and/or agreement pursuant to Section 148 of the Code and the U.S. Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Act and this Resolution.

Section 12: Unless previously exercised, the authority to issue the Bonds contained in this Resolution shall expire on the date which is one (1) year from the effective date of this Resolution, unless such authority shall have been extended by a resolution supplemental hereto.

Section 13: In accordance with the Act, this Resolution takes effect immediately upon its adoption.

Adopted by the Mayor and City Council this 6th day of July, 2004.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the
foregoing Resolution was adopted
by the Mayor and City Council, in
public meeting assembled on the
6th day of July, 2004.

David B. Humpton, City Manager